resume, I supose, the same sort of life; he will be depressed, irritable, confused and unable to occupy himself; he will always be liable to outbursts and delusions, or may always be liable, and it may be when one looks at the worst side his condition will deteriorate further, and he might have to become an inmate for long or short periods, conceivably permanently, of a mental home. One does not know but one is faced with the prospect. I do not think it is rhetorical to say that many men would think that it is worse than death, and death would in some way be a release.

If a man is crippled or paralysed he can still make something of his life, if there is still left to him strength of mind; if that is taken away what weapon has he left with which to fight misfortune? On the other hand, there are factors I have to take into consideration on the other side. There is not the same terrible certainty as to the future as there is when a man is crippled or paralysed. There it is definite that there is only one verdict that the doctors can pronounce. In the case of mental health there can be no similar degree of definition and there is the possibility of improvement; that has got to be taken into consideration and one cannot be certain as one can with physical consequences.

There is also a possibility that in some way in some sense deterioration might bring relief; greater acquiescence and a degree of apathy might bring relief to the mind. That is a possibility. One must not look upon his life, though it seems very dark at the moment, as being without, at any rate, glimmerings of hope of a happier future.

I must take into consideration, too, that apart from the headaches there is not the constant physical pain that might well accompany a grave physical injury and which lasts a man all the rest of his life.

I must take into account also that I have assessed, so far as I can, the compensation for loss of earnings, and what I have to do is to put a sum that is solely attributable to the loss which he sustained, in that the spring has gone out of his life. I think I should take a figure — it is hardly more than a figure — which in the practice of the Courts as I understand it is the sort of appropriate figure to take in those circumstances for that loss only, and I take the figure of £8,000.

I am conscious that this is not a case in which money can recompense anything. In a case of physical disability, though money can never restore a limb, or never restore power to a limb, it can provide alternative forms of enjoyment. Here I doubt whether it can do that, but it can at least ensure a measure of comfort which he might not otherwise have, and it will enable him to make provision to spare his wife part of the burden which is their common misfortune, because for her share of it the law does not permit direct compensation to be made."

Just as the consideration of age must be remembered when arriving at the loss of earnings in the case of a plaintiff who can never work again, so must that element be remembered when damages are being assessed for loss of amenities of life. (*Bird* v. *Cocking & Sons Ltd.*[3]). The plaintiff in this case was, as I have said, 56 years of age.

Bearing this consideration, and the observations of Devlin J. in mind, I consider that, in all the circumstances of this case, an appropriate award under this head will be $25,000.

There will therefore be judgment for the plaintiff against the third defendant for $4,470 special damage and $37,600 general damages.

I will hear argument as to costs.

Judgment for the plaintiff.

Solicitors: *Lim Swee Gaik; Lim Kean Siew & Co.; Eugene Khoo & Co.*

PUBLIC PROSECUTOR v. YEOH SIEW BENG

[A.Cr.J. (Gill J.) October 31, 1964]

[Ipoh — Criminal Appeal No. 69 of 1964]

Criminal Law — Offensive weapon — Possession of — Accused a police officer — Possession when in civilian clothes and not on duty — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s. 6 (1), (3) (a) — Presumption.

The respondent was charged with being found in possession of an offensive weapon, to wit, a pistol-shaped dagger, otherwise than with lawful authority or for a lawful purpose contrary to section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance. There was evidence that the place where he was found to be so in possession was a public place, that he was in fact a member of the police force and that he was in civilian clothes and not on duty at the time of his arrest. At the close of the prosecution case the respondent was acquitted on the ground that he, being a member of the police force, was presumed to be in possession of the weapon with lawful authority until the contrary was proved.

Held: (1) the presumption under section 6(3)(a) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance arises on proof firstly, that the person found in possession of the offensive weapon was a member of the police force, and secondly, that the weapon in question was carried in or in connection with the performance of his duty as such member of the police force. In this case as there was no evidence whatsoever that at the time of his arrest he was on duty or that he carried the dagger in or in connection with the performance of his duty as a policeman, the order of acquittal should be set aside;

(2) it was not for the prosecution to prove that the accused had no lawful authority because the burden of proving a fact which is especially within the knowledge of any person lies on that person.

Per Gill J.: "A policeman cannot be said to be carrying an offensive weapon with lawful authority unless it is shown that it is the type of weapon which is normally issued to him for the purpose of discharging his duty."

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Gill J.: The respondent was charged in the magistrate's court at Taiping with being found in possession of an offensive weapon, to wit, a pistol-shaped dagger, otherwise than with lawful authority or for a lawful purpose contrary to section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance No. 43 of 1958 (hereinafter referred to as the 'Ordinance').

On the evidence for the prosecution the learned magistrate made a finding that the respondent was found to be in possession of a pistol-shaped dagger and that the place where he was found to be so in possession was a public place. He also found as a fact that the respondent was a member of the police force. However, there was evidence that the respondent was in civilian clothes and not on duty at the time of his arrest, and that he was on his way to a friend's house for a meal in a car driven by his friend. The car had stopped at a railway gate and both the respondent and his friend had got out of it when a police inspector came up and took the dagger out of the respondent's pocket.

At the close of the case for the prosecution the learned magistrate acquitted the respondent on the ground that the respondent, being a member of the police force, was presumed to be in possession of the weapon with lawful authority until the contrary was proved. Against that acquittal the Public Prosecutor appealed.

In acquitting the respondent of the charge on which he was tried the learned magistrate relied on the provisions of section 6(3)(a) of the Ordinance which reads as follows:

"6(3) A weapon shall be presumed to be carried with lawful authority if it is carried —

(a) by a member of the armed forces of the Federation or of any local force or of the police force or of any visiting force lawfully present in the Federation under the provisions of any law relating to visiting forces, or a person in the service of any Government or local authority in the Federation, and in any such case is carried in or in connection with the performance of his duty as such member or person;

. . . . . ."

It will be observed that the presumption under section 6(3)(a) arises on proof, firstly, that the person found in possession of the offensive weapon was a member of the police force, and secondly, that the weapon in question was carried in or in connection with the performance of his duty as such member of the police force. In the present case there was evidence that the respondent was a member of the police force but there was no evidence whatsoever that at the time of his arrest he was on duty or that he carried the dagger in or in connection with the performance of his duty as a policeman.

The learned magistrate stated in his grounds of judgment that the presumption in question arises until the contrary is proved, and that the effect of this section 6(3)(a) of the Ordinance is to throw upon the prosecution the burden of proving that the accused had no lawful authority. To my mind, no such burden lies on the prosecution. It is not for the prosecution to prove the negative, and the burden of proving a fact which is especially within the knowledge of any person lies on that person.

Although there was evidence in this case that the respondent was a member of the police force, for the presumption fully to arise it was necessary for the learned magistrate to consider whether there was any evidence that the respondent carried the dagger in or in connection with the performance of his duty as a member of the police force. Such evidence may be brought out by cross-examining witnesses for the prosecution, but if it is not so brought out the onus of proving it lies on the accused, although the extent of proof required is lighter than that which is placed on the prosecution to prove its case. As there was no evidence to show that the dagger in question was carried in or in connection with the performance of the respondent's duty as a policeman, the learned magistrate should have called on the respondent for his defence.

The learned magistrate stated in his grounds of judgment that the phrase "carried in or in connection with the performance of his duty as such member" in section 6(3)(a) is wide enough to include any weapon. I do not agree. A policeman cannot be said to be carrying an offensive weapon with lawful authority unless it is shown that it is the type of weapon which is normally issued to him for the purpose of discharging his duty.

The learned magistrate went on in his grounds to ask what a policeman should do if he comes across an offensive weapon lying on the roadside when he is on his normal beat duty. He has answered the question by saying that a policeman faced with a situation such as that would be duty bound to pick it up and take it to the police station lest it might get into wrong hands. I entirely agree with him, but there was no evidence here that the respondent picked up the dagger on the roadside when he was on his normal beat duty. What the learned magistrate in effect was doing was to anticipate the accused's defence. It is always possible from the trend of cross-examination to anticipate the defence of an accused person, but a magistrate has got to get it out of the accused's mouth before he can even consider it, much less act on it.

I was satisfied that the learned magistrate had misdirected himself in law and wrongly acquitted the respondent without calling on his defence. I therefore set aside his order of acquittal and made an order for a retrial before another magistrate.

Retrial ordered.